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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-405

NOGALES SERVICE CENTER,
an Arizona corporation,

Petitioner,

v.

ATLANTIC RICHFIELD COMPANY,
a Pennsylvania corporation,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS

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THE QUESTION PRESENTED

Do state courts have jurisdiction to entertain suits founded on the federal antitrust laws?

STATEMENT

The respondent, Atlantic Richfield Company (called "ARCO" hereafter), sued petitioner Nogales Service Center (hereafter called "Center") to foreclose a realty

mortgage. The action was filed in the Superior Court of Arizona in Santa Cruz County. The Center counterclaimed for damages from ARCO's asserted violations of the anti-trust laws of the United States and of Arizona. On ARCO's motion the trial court dismissed as beyond its jurisdiction those claims based on the federal statutes. The Center appealed; the Arizona Court of Appeals affirmed; and the Supreme Court of Arizona denied review. This Petition followed.

ARGUMENT

"It is undesirable to believe a proposition when there is no ground whatever for supposing it to be true."*

To the assertion that state courts have the jurisdiction claimed for them in the Petition, four answers are available.

There is no support for the proposition to be found in case law.

There is no support for it in scholarly writing.

This Court has rejected it for over fifty years, and Congress has lived happily with the rejection.

To advance the proposition is to ignore fundamental considerations of public policy and to invite both chaos in the law and an even greater burden of judicial review by this Court.

The Petition admits two opinions of this Court as the source of the now widely-accepted principle that cases brought under federal antitrust laws must be brought in the federal courts. *Blumenstock Brothers Advertising Agency v. Curtis Publishing Company,* 252 U.S. 436 (1920), and

*Russell, *The Doctrine of Rational Scepticism.*

Freeman v. Bee, Inc., 319 U.S. 448 (1943), state precisely that rule. The Center, however, dismisses those announcements of the law as dicta. But their common dictum has stood - and been understood - as law for fifty-eight years. And those lower courts that have adopted it have done so in ruling squarely on the question. Petitioner ignores the now numerous cases in which the assertion of state court jurisdiction has been rejected. They include:

Englehardt v. Bell & Howell Co., 327 F.2d 30.

Cream Top Creamery v. Dean Milk Company, 383 F.2d 358.

Hand v. Kansas City Southern Railway Co., 55 F.2d 712.

State of Washington v. American League of Professional Baseball Clubs, 460 F.2d 654.

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The list is illustrative, not exhaustive. (Other cases are collected at 15 U.S.C.A. §15, notes 424 and 425.)

The proposition is now so clear a part of settled law that this Court as recently as last year has stated it without extended exposition. In *Vendco Co. v. Lektro-Vend Corp.,* 433 U.S. 623 (1977), the court held:

> "The private action for damages conferred by the Clayton Act is a 'uniquely federal right of remedy,' in that actions based upon it may be brought only in the federal courts." (433 U.S. at 632)

And four members of this court, although dissenting, agreed that:

> "Congress has granted the federal courts exclusive jurisdiction over the prosecution of private antitrust litigation." (Stevens, J., 433 U.S. at 664)

Further, 15 U.S.C. §15 is not the only jurisdictional statute germane to the issue. When the Clayton Act was adopted, its Section 16 became what is now 15 U.S.C. §26, which presently reads, in applicable part:

> "Any person . . . shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws . . ."

The Center here contends that by failing specifically in 15 U.S.C. §15 to deny state court jurisdiction Congress has granted that jurisdiction. There is no such express denial of state jurisdiction in §26, either. Yet this Court has squarely held that the federal court's jurisdiction under §26 is exclusive. Two years after *Blumenstock,* in *General Investment Co. v. Lake Shore & M. S. R. Co.,* 260 U.S. 261 (1922), Justice Van Devanter posed the question for decision this way:

> "Was plaintiff entitled to sue under the Sherman Anti-Trust Act and the Clayton Act, and, if so, could that right be exercised through a suit brought in a state court?" (260 U.S. at 286)

Having answered affirmatively the first question, this Court (260 U.S. at 287) answered the second:

> "This right to sue, however, is granted in terms which show that it is to be exercised only in a 'court of the United States.' This suit was brought in a state court, and, in so far as its purpose was to enjoin a violation of the Sherman Anti-Trust Act, that court could not entertain it. The situation was the same in respect of the purpose to enjoin a violation of the Clayton Act."

Unable to support its claim with case law, the Center has sought the help of scholarly texts. It has, however, chosen strangely from among them. On Page 7 of its Petition it has cited Wright, Miller and Cooper, *Federal Practice & Procedure,* as sustaining its position. What those authors *really* say is said clearly:

> "If the Congress creates a cause of action, it may require that the substantive right be prosecuted exclusively in the federal courts, *as the Congress has done in the context of antitrust . . .*" §3527, p. 123. (emphasis ours)

The cases and the scholars, to be sure, are not the primary source of the rule. That source is the statute itself. One injured by antitrust violations "may sue therefor in any district court of the United States . . ." (15 U.S.C. §15). Had Congress meant to provide for state jurisdiction concurrent with that of the federal courts, it knew how to do so. It has done so, for example, in areas of bankruptcy, in the Federal Employers Liability Act and elsewhere. It did not do so here.

The selectively excerpted legislative history of the controlling statute is no help to the Center. This Court may and sometimes will search out legislative history for material reflecting Congress' intent in a legal area otherwise obscure. The truth is, however, that there is simply no such thing as "legislative intent" except as it is made manifest in the language of the statute. There are, instead, only individual intents, each lawmaker being entitled to his own, and some informing themselves sufficiently to possess them. This Court has long ago recognized that

> "These statements of the author of the Act in advocating its adoption cannot, of course, control its construction, where there is doubt as to its meaning."

Jennison v. Kirk, 98 U.S. 453. Thus, even if the Senator

(Edmund) and the Congressman (Culbertson), on whose pronouncements the Center here depends, were in truth the authors of 15 U.S.C. §15, those pronouncements before its enactment cannot control its construction. Many things are said, pro and con, before the enactment of a statute. It would be an invitation to chaos to permit state and lower federal courts to seek out solutions to statutory problems in the quagmire of the Congressional Record when this Court's own clear solutions to those problems lie close to hand.

But if, indeed, Congress' intent with respect to the statute has importance of its own, apart from the words themselves which Congress chose to use, that intent is clear enough. When Justice Day wrote, in 1920, that an action under the antitrust laws of the United States "can only be brought in a District Court of the United States" (*Blumenstock, supra*), his words, dicta or not, were perfectly clear English. They left no question of this Court's view of the matter. When Justice Douglas wrote (*Freeman, supra*) that a state court did not have jurisdiction over a cause of action under the federal antitrust laws, lawyers may have argued that his pronouncement was a dictum, but is there any conceivable question about what he meant? Congress has been informed of the views of this Court on this question for fifty-eight years. It has known that long that in this Court's view the jurisdiction of the District Courts over these cases was exclusive. And it has done nothing. It has accepted that rule without even once, so far as is recorded, entertaining an amendment of the statute that would change it.

History is as compelling an argument against the Center's position as is the statute itself.

There is still another. The statute as it has been uniformly read over a half a century serves a real and useful public purpose. Implicit in the very fact of federal antitrust

legislation is the requirement that it be applied and enforced uniformly across the nation. That requirement of uniformity suggests in its turn the necessary restriction of jurisdiction to courts of a single system, the federal. The fifty states, possessing their own separate courts almost without number, are badly situated to provide a common, nationwide and uniform enforcement of the federal laws.

As the earlier quoted dissent in *Vendo Co. v. Lektro-Vend Corp., supra,* points out:

> "The Illinois decision on the merits merely highlights the fact that state and federal courts apply significantly different standards in evaluating contracts in restraint of trade." (433 U.S. at 663)

To be sure, this Court sits to correct their errors and to impose, finally, the uniformity indispensable to the federal scheme. ARCO suggests, however, that the checkered history of review of FELA cases, and a recognition of the demands which that Act, with its provision for concurrent jurisdiction, has imposed on this Court, should surely argue against creating that same concurrent jurisdiction here.

The Center argues that such an expansion of antitrust jurisdiction would afford relief to the admittedly hard-pressed District Courts. Nothing in modern American experience justifies any such optimism. Lawsuits expand to fill the courts available to hear them. It is far more likely that the judicial grant of antitrust jurisdiction to state courts would simply produce more antitrust actions, all of them ultimately the appellate responsibility of this Court.

The question raised by the Center's petition is not an open one, and has not been for more than half a century. When this Court has spoken as clearly to the statute's meaning as it spoke in *Blumenstock, Freeman* and *General Investment Co.*, its pronouncements have become operative parts of the

statute itself. Congress, the appropriate body to change the rule, has shown over all that period no disposition to do so. Jurisdiction over cases brought under the federal antitrust laws is in the federal courts. By statute, by case law, by scholarly authority that jurisdiction is exclusive, and by compelling public policy it should remain so.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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